

*1/26/97  
Re: [unclear] list of motion  
Need to see top - re suppression motion*

NAME: Nikerray Middlebrook  
M.P.C.S.F.  
1301 EAST 12th STREET  
Wilmington, DE 19809

OFFICE OF THE PUBLIC DEFENDER  
CARVEL STATE Building  
820 North French Street  
Wilmington, DE 19801

DATE: JANUARY 26, 1997

97 JUN 27 P231  
[unclear]

DEAR JAMES A. BAYARD JR.,

PLEASE FILE THE MOTION(S) INDICATED BELOW IN MY BEHALF:

- (✓) Motion For DISCOVERY - RULE 16
- (✓) Motion For SPEEDY TRIAL
- (✓) Motion For REDUCTION OF BAIL - *can change dropped check out*
- (✓) Motion For ~~SUPPRESSION HEARING~~
- ( ) Motion To Dismiss - Failure to Indict, Failure To Prosecute
- ( ) Motion For Reduction of SENTENCE
- ( ) NOTICE OF APPEAL
- (✓) Other PRE-trial MOTIONS NECESSARY \_\_\_\_\_

PERSONAL INFORMATION

NAME: Nikerray K Middlebrook

IN. NO.: \_\_\_\_\_

CHARGES: ATT. MURDER, ATT MURDER, ATT MURDER, ATT ROBBERY 1st, P.F.O.C.F., RESIST ARREST  
CRIM IMPERSON, HINDERING, FORGERY 2ND, RE SBI FEAR, PDWBPP, ASST 3rd, RSP

I Nikerray K Middlebrook, APPRECIATE YOUR ASSISTANCE  
For the Filing of THESE FUNDAMENTAL MOTIONS IN MY BEHALF, THANK YOU.

Respectfully Yours,

*9/11/96 case  
[unclear] have money  
[unclear] money  
[unclear] from  
[unclear] head  
[unclear] from*

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

PLAINTIFF,

v.

IN 96091119  
IN 96091120  
CR. A. NO. 9608015635

NIKERRAY MIDDLEBROOK

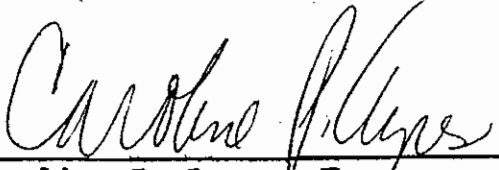
DEFENDANT.

NOTICE OF MOTION

To: Ferris Wharton  
Deputy Attorney General  
Carvel State Office Building  
820 North French Street  
Wilmington, Delaware 19801

PLEASE TAKE NOTICE that the undersigned Counsel will present the attached Defendant's Motion for a New Trial to this Honorable Court at the earliest convenience of the Court and Counsel.

Dated: June 23, 1998

  
Caroline P. Ayres, Esq.  
503 West Ninth Street  
P.O. 85  
Wilmington, Delaware 19899  
(302) 655-1300  
Motion Attorney for Defendant

Ex. A-1

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

PLAINTIFF,

v.

IN 96091119  
IN 96091120  
CR. A. NO. 9608015635

NIKERRAY MIDDLEBROOK

DEFENDANT.

MOTION FOR A NEW TRIAL

COMES NOW the Defendant, through his attorney, Caroline P. Ayres, and moves this Honorable Court for a new trial. As grounds, Defendant states the following:

1. Defendant was found guilty of attempted murder, assault in the first degree and various weapon charges, and was sentenced on June 12, 1998 to 37 years.
2. Petitioner does not have any other sentences he is currently serving other than the one under attack.
3. Petitioner is currently represented for purposes of this motion by Caroline P. Ayres, Esquire.
4. This Defendant's first request for a New Trial.
5. Defendant's basis for a new trial is warranted in the interest of justice; and is based on new evidence, as well as the need of relief from procedural defects, which occurred during his trial.
6. Defendant asserts that a retrial could reasonably result in a different verdict and judgment because new evidence and errors of previous defense counsel affected the outcome of Defendant's trial.

7. A new trial is warranted where there is a showing that a retrial could reasonably be expected to result in a different verdict of judgment. See State V. Curran, Del. Super., 116 A.2d 782 (1955), aff'd, Del. Supr., 122 A.2d 16, cert. denied, 352 U.S. 913 (1956). The evidence must also have been discovered since the trial, and could not have been discovered before by the exercise of due diligence; and the evidence is not merely cumulative or impeaching. State v. Hamilton, Del. Super., 406 A.2d 879 (1974).

8. In the present case, a key witness testified at trial that Defendant showed his face by lifting his mask when the shooting occurred. However, new evidence has just come to light that proves that none of the shooters at the scene of the crime had removed or lifted their masks during the shooting. (Exhibit "A") In fact, none of the shooters' skin could be seen, as they all wore gloves which were never removed during the shooting. This evidence was only discovered inadvertently when a witness to the shooting read about defendant's trial and sentencing in the News Journal at the conclusion of these proceedings. Neither Defendant nor Defense counsel was aware of this witness, until after Defendant's sentencing.

9. Furthermore, a new trial is proper when, under all the circumstance; counsel was so incompetent that the accused was not afforded genuine and effective legal representation. Harris V. State, Del. Supr., 305 A.2d 318 (1973); Derrickson V. State, Del. Supr., 406 A.2d 405 (1979).

10. In other words, this motion is the proper vehicle by which to bring ineffectiveness of counsel claims before the Delaware Courts, Reynolds V. Ellingsworth, 843 F.2d 712 (3d Cir.), cert. denied, 488 U.S. 960 (1988).

11. Defendant was denied his constitutional right to effective counsel, which resulted in a "miscarriage of justice", and "undermined the fundamental legality reliability, integrity, or fairness of the proceedings leading to the judgment of conviction."

12. Additionally, because of ineffectiveness assistance of counsel, Defendant did not make an informed decision about whether to accept the plea offered by the State.

13. "To establish a claim ineffective assistance of counsel, A defendant must prove both: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense." Williams V. State, 605 A.2d 103, 106 (Md. 1992), citing Bower V. State, 578 A.2d 734, 738 (Md. 1990).

14. In order to prove the first prong of the test, "a defendant must prove, that, under the prevailing professional norms, his counsel's representation, objectively speaking, fell below a standard of reasonableness." Strickland V. Washington, 460 U.S. at 688, 104 S.Ct. at 2964, 80 L. Ed.2d at 693.

15. In order to prove the second prong of the test, "the attempt is to determine whether, but for the deficient performance by counsel, there is a substantial possibility that the defendant would have accepted the plea agreement." Williams V. State, 578 A.2d. 734, 739, (Md. 1990) "there was a substantial or significant possibility that the verdict of the trier of facts would have been affected." In the present case. Defense counsel neglected to put on critical witnesses which would have established Defendant's innocence. Defense counsel also failed to properly object to improper and prejudicial evidence presented by the State.

16. In the case of at bar, Defendant also received inefficient assistance of counsel, in violation of his Sixth Amendment right in preparation to decide whether or not to accept the State's offered plea agreement.

17. "A trial attorney performs deficiently when he ... with incomplete or misleading information with regard to the offer." Williams V. State, 605 A.2d 103, 108 (Md. 1992), citing Turner V. State of Tennessee, 158 F.2d 1201, 1205 (6th Cir.. 1988), vacated on other grounds 492 U.S. 902, 109 S. Ct. 3208, 106 L.Ed.2d 559 (1989).

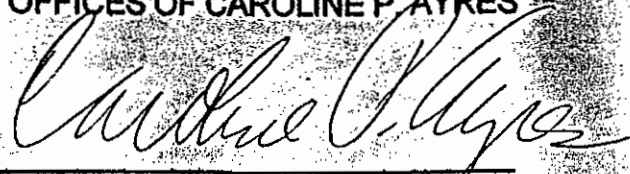
18. Defendant was also prejudiced by the ineffective assistance of counsel because the misrepresentations by defense counsel regarding Defendant's decision to accept the plea agreement offered by the state.

19. Overall, the verdict of guilty in the present case was against the weight of evidence. Therefore, a new trial should be granted. See Hutchins v. State, Del. Supr., 153 A. 2d 204 (1959).



WHEREFORE, Defendant respectfully requests that his Motion for a New Trial be granted.

LAW OFFICES OF CAROLINE P. AYRES



Dated: June 23, 1998

Caroline P. Ayres, Esquire  
503 West Ninth Street  
P. O. Box 85  
Wilmington, DE 19899  
(302) 655-1300  
Attorney for Defendant

EX A-5

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

PLAINTIFF,

v.

IN 96091119

IN 96091120

CR. A. NO. 9608015635

NIKERRAY MIDDLEBROOK

DEFENDANT.

ORDER

AND NOW, TO WIT, this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1998,

the foregoing Motion having been heard and considered, it is hereby:

ORDERED \_\_\_\_\_

\_\_\_\_\_  
Judge

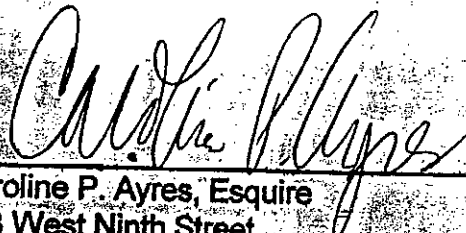
EX. A-6

CERTIFICATE OF SERVICE

I, Caroline P. Ayres, Esquire, do hereby certify that I have mailed copies of the attached Motion for a New Trial on June 23, 1998 to the below-mentioned person:

Ferris Wharton  
Deputy Attorney General  
Caryl State Office Building  
820 North French Street  
Wilmington Delaware 19801

Dated: June 23, 1998

  
Caroline P. Ayres, Esquire  
503 West Ninth Street  
P. O. Box 85  
Wilmington, DE 19899  
(302) 655-1300  
Attorney for Defendant

EX. A-7



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

NIKERRAY MIDDLEBROOK,

Defendant.

)  
)  
)  
)  
)  
)  
)

ID#: 9608015635

Submitted: June 24, 1998

Decided: June 26, 1998

**ORDER**

Upon Defendant's Motion for a New Trial

On June 23, 1998 Defendant, through counsel, filed a Motion for a New Trial. Before the Court asks for the State's response, Defendant must provide more details concerning Amanda Chambers and her affidavit, including but not limited to why she did not come forward sooner. On that point, Ms. Chamber's allegation, in its entirety, is:

The first I really heard about the trial was when it appeared in the newspaper.

Defendant's trial concluded on July 18, 1997. Ms. Chamber's affidavit was signed on June 23, 1998.

Ex A-8

As to Defendant's ineffective assistance of counsel claim, Defendant's allegations are conclusory. Currently, there is no basis for the Court to pursue them.

In the event that Defendant files an amended or supplemental pleading supplying particulars, the Court will require the State to respond and proceed as circumstances warrant. In connection with an amended or supplemental pleading, it may be necessary for Defendant to obtain transcripts.

Meanwhile, as presented, the Court finds that Defendant's Motion for a New Trial is insufficient on its face to justify further proceedings and is **DENIED.**

**IT IS SO ORDERED.**

June 25, 1998

Date



Judge

cc: Prothonotary  
Scott Stein, Deputy Attorney General  
Robert Surles, Deputy Attorney General  
Caroline P. Ayres, Esquire

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

PLAINTIFF,

v.

NIKERRAY MIDDLEBROOK

DEFENDANT.

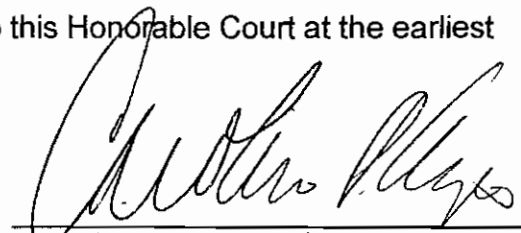
IN 96091119  
IN 96091120  
CR. A. NO. 9608015635

NOTICE OF MOTION

To: Ferris Wharton  
Deputy Attorney General  
Carvel State Office Building  
820 North French Street  
Wilmington, Delaware 19801

PLEASE TAKE NOTICE that the undersigned Counsel will present the attached Defendant's Renewed Motion for a New Trial to this Honorable Court at the earliest convenience of the Court and Counsel.

Dated: July 23, 1998



Caroline P. Ayres, Esq.  
503 West Ninth Street  
P.O. 85  
Wilmington, Delaware 19899  
(302) 655-1300  
Motion Attorney for Defendant

EX. A-10

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

PLAINTIFF,

v.

IN 96091119  
IN 96091120  
CR. A. NO. 9608015635

NIKERRAY MIDDLEBROOK

DEFENDANT.

RENEWED MOTION FOR A NEW TRIAL

COMES NOW the Defendant Nikerray Middlebrook, through his attorney, Caroline P. Ayres, and moves this Honorable Court for a new trial. As grounds, Defendant states the following:

1. Defendant was found guilty of attempted murder and related charges and sentenced on June 12, 1998.
2. On June 23, 1998, Defendant filed a Motion for a New Trial with this Court. In response to this motion, the Court ordered that Defendant produce additional information as to why a new witness was not available to testify at the time of the trial, before further consideration of the Motion would be granted.
3. This is Defendant's Renewed Motion for a New Trial, explaining why the above-mentioned witness, Ms. Amanda Chambers, was only available to testify regarding the facts in this case after the trial had concluded. (Exhibit "A")

EX A-11



4. Before the trial had become publicized in the present case, Ms. Chambers had moved to Brookland, New York. She lived in New York, until February 1998, when she returned to Delaware. Immediately upon her return to Delaware, she was incarcerated at the Delores Baylor's Correctional Center, where she remains at the present time. While at the Correctional Center, she came across a copy of a News Journal issue, which detailed the conclusion and sentencing in Defendant's case at bar. Before reading this news article, Ms. Chambers had no idea that Mr. Middlebrook was being prosecuted for the above-mentioned crimes. She believed this because, at the time of the shooting, no faces were ever shown that would have implicated anyone in the shooting. (Exhibit "A")

5. Defendant avers that Ms. Chamber's testimony must be considered because it directly contradicts testimony that the Defendant's face was seen at the time of the shooting in the present case. This testimony regarding seeing Defendant's face at trial is what lead to the Defendant's conviction.

6. In order to justify the grant of a new trial on the ground of newly discovered evidence, it must appear that: the evidence will probably change the outcome of the case, if a new trial is granted; that the evidence was discovered since the trial, and could not have been discovered by the exercise of due diligence; and the evidence is not cumulative or impeaching. State v. Hamilton, Del. Super., 406 A.2d 879 (1974). See also Smith v. Smith, Del. Supr., 248 A.2d 146 (1968).

7. In applying Hamilton to the present case, Defendant avers that Ms. Chamber's testimony will probably change the outcome of the case because she established that it was impossible to see Defendant's face at the time of the shooting

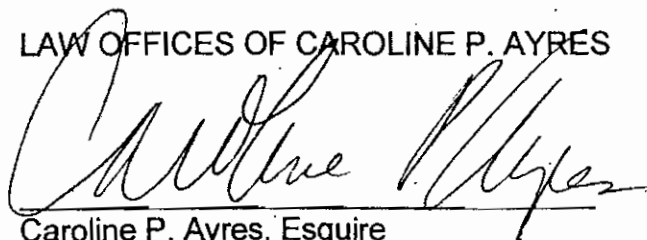
because everyone was wearing a mask. However, her testimony could not with reasonable diligence have been presented during Defendant's trial because Defendant was unaware of her existence, and she was unaware that he was being prosecuted for the shooting she had witnessed, until she had read about Defendant's sentencing. Finally, the testimony of Ms. Chambers is not cumulative or just impeaching, but goes to the very heart of the case, as to whether the Defendant was actually seen at the shooting at which he had been found guilty of committing. Therefore, a new trial in the present case is warranted because of the needed presentation of Ms. Chamber's testimony.

8. Consequently, Defendant avers that, pursuant to Superior Court Rule 33, justice requires that he be given a new trial, so that Ms. Chamber's testimony and the truth can be presented.

WHEREFORE, Defendant respectfully requests that his Renewed Motion for a New Trial be granted.

Dated: July 31, 1998

LAW OFFICES OF CAROLINE P. AYRES



Caroline P. Ayres, Esquire  
503 West Ninth Street  
P. O. Box 85  
Wilmington, DE 19899  
(302) 655-1300  
Motion Attorney for Defendant

STATE OF DELAWARE :

:SS

COUNTY OF NEW CASTLE :

AFFIDAVIT OF

Amanda Chambers

*The State*

I, Amanda Chambers, having been duly sworn, based

upon personal knowledge and belief, state as follows:

I was at the scene when the alleged murder took place. When the shooting occurred, the shooters had on masks and gloves. Therefore their color behind their faces could not be seen at all. No one took their masks off or lifted them. They didn't take their gloves off either. The reason I didn't come forth prior to the trial is because I didn't know it went any further than the incident. The first I really heard about the trial was when it appeared in the news paper.

Amanda Chambers

SWORN and SUBSCRIBED before me this 23<sup>rd</sup> day of June, 1998, A.D.

Caroline P. Piper  
Notary/Attorney-At-Law

EX - A-14

**SUPERIOR COURT FOR THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE, )  
 )  
 v. ) ID No.: 9608015635  
 )  
 NIKERRAY MIDDLEBROOK )  
 )  
 Defendant. )

**ORDER**

1. On September 18, 1998, the Court received a letter from Ms. Ayres enclosing an affidavit.

2. If the State opposes the request, the State will file a response within 15 days. The State's response shall include the grounds on which the State's opposition is based, including citations to the record and authorities.

3. *In the event that the State does not respond on or before the time set for the State's filing a response, the Court will consider the motion without further notice or hearing and the Court may grant the motion as unopposed.*

4. The Court will consider extending the deadline set out above, upon

Ex. A-15



application made ~~at~~ expiration of the deadline.

5. ~~The~~ It will not consider filings made after the deadline, absent an extension.

**IT IS ORDERED.**

Sept 11 1998

Date

JSSil

Judge

cc: Prothonotary  
pc: Robert Surin ~~by~~ Attorney General  
Caroline P ~~at~~ res, Esquire

THE LAW OFFICES OF  
**CAROLINE PATRICIA AYRES**

ATTORNEY & COUNSEL AT LAW

September 16, 1998

CAROLINE PATRICIA AYRES  
Admitted to Delaware, Maryland,  
District of Columbia, Virginia, and  
United States Supreme Court Bars  
Only

OF COUNSEL  
**JOHN R. HINER JR.**  
Admitted in Delaware and California  
Only

OF COUNSEL  
**MONTEE WYNN**  
Admitted to Pennsylvania, New Jersey,  
and District of Columbia Bars Only

OF COUNSEL  
**ALERO SMITH-KIDD**  
Admitted to Nigerian Bar and  
Solicitor in England Only

TELEPHONE (302) 655-1300  
FAX (302) 655-3032  
TOLL FREE 1-800-67 AYRES

WILMINGTON OFFICE:  
503 WEST NINTH STREET  
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DOVER OFFICE:  
375 WEST NINTH STREET  
DOVER, DELAWARE 19901  
TELEPHONE (302) 735-5590  
FAX (302) 735-5592

VIRGINIA OFFICE:  
650 TRENTS MILL ROAD  
POST OFFICE BOX 907  
DILLWYN, VIRGINIA 23936

The Honorable Fred Silverman  
Superior Court  
One Rodney Square, Suite 101  
920 North King Street  
Wilmington, Delaware 19801

Re: State v. Nikerray Middlebrook  
I.D. No. IN 96091119 and IN 96091120  
CR. A. NO. 9608015635

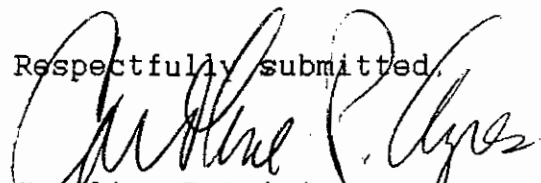
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Dear Judge Silverman:

Enclosed please find yet another affidavit that refutes material testimony presented at trial in the above-mentioned case, which also identifies a defendant, not of Mr. Middlebrooks' height. The Defendant respectfully requests that this additional affidavit be considered as additional grounds for granting Mr. Middlebrook a new trial.

Thank you for your consideration of the above-mentioned request.

Respectfully submitted,

  
Caroline Patricia Ayres

CPA/midd916.doc

cc: middni.01

Mr. Nikkery Middlebrook

Ferris Wharton, Deputy Attorney General

EX. A-17

# Affidavit of Regina Green

I Regina Green being duly sworn to depose and state based upon my personal knowledge and belief the following

I <sup>saw</sup> the the 96 shooting involving Nikkey Middlebrook and witnessed everything first hand. The shooter was over 6 feet tall and slender. At no time did the shooter removed his ski mask he was wearing nor his face was revealed.

I had no idea that Nikkey Middlebrook was being charged or even tried for this shooting until I spoke to Mrs. Phyllis over 2 months ago. This is when I made the statement to her. Mrs. Phyllis called Nikkey's mother and I told her what happened. And asked if ~~some~~ ~~one~~ ~~would~~ I would tell the

attorney what I saw. And I  
said yes. Ms. Regina Green

Regina Green

SWORN TO AND  
SUBSCRIBED BEFORE  
ME THIS 10th Day of  
September.

Caroline Riley

State of Delaware  
County of Newcastle: ss

Notary Public/Attorney





M. JANE BRADY  
ATTORNEY GENERAL

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

NEW CASTLE COUNTY  
Carvel State Building  
820 N. French Street  
Wilmington, DE 19801  
Criminal Division (302) 577-6630  
Fax: (302) 577-6496  
Civil Division (302) 577-8400  
Fax: (302) 577-6630

KENT COUNTY  
Sykes Building  
45 The Green  
Dover, DE 19901  
Criminal Division (302) 739-4211  
Fax: (302) 739-6727  
Civil Division (302) 739-7641  
Fax: (302) 739-7652

SUSSEX COUNTY  
114 E. Market Street  
Georgetown, DE 19947  
(302) 856-5352  
Fax: (302) 856-5369

October 9, 1998

PLEASE REPLY TO:

New Castle County  
(302) 577-8500

The Honorable Fred S. Silverman  
Superior Court Judges Chambers  
Daniel L. Herrmann Courthouse  
1020 N. King Street  
Wilmington, DE 19801

RE: State v. Nikerray Middlebrook  
ID# 9608015635

Dear Judge Silverman:

STATE'S MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENSE'S MOTION FOR A NEW TRIAL

QUESTIONS PRESENTED

Is there merit for granting a new trial based on newly discovered evidence, when a witness, not available at trial, comes forward with information already present after a sentence has been ordered?

NEW EVIDENCE

The defendant has presented the court with affidavits of two newly discovered witnesses. First, Amanda Chambers writes that the shooters kept their faces covered with masks the entire time and no faces were ever shown. Second, Regina Green states that she was present at the shooting and that at no time did the shooters mask come off, nor was his face revealed.

Ex. A-20

### EVIDENCE AT TRIAL

At trial, Jerry Williams stated that before he was shot, he got a look at the masked shooter and knew from his past experience that it was the defendant. Jerome Perkins indicated that after Jerry Williams was shot, the shooter pursued him around the block and at some point, the shooter dropped an item. When the shooter dropped down to retrieve the item, the ski mask came up and the defendant's face was revealed to Jerry Williams.

Miesha Perkins testified at trial that as the shooter pursued Jerome Perkins down the block, she pursued the shooter. At some point, the shooter dropped something and had to bend over to pick it up. When the shooter bent down, he peeled his mask back and turned his head. At that point, she saw clearly that it was the defendant, who she knew previously.

Fred Fillipone, a Wilmington Police Department evidence officer testified that he recovered 9mm casings, gloves and most importantly a mask from the scene.

At the trial, Gretta Lewis and Darnell Anderson testified for the defendant. They testified that there were two masked shooters and that they never saw their faces.

### ANALYSIS

Delaware Superior Court Rule 33 allows a "new trial based on the grounds of newly discovered evidence (if a motion is made) before or within two years after final judgment..." The standard applicable to said evidence was outlined in Lynch, 2 W. W. Hann. 600, 32 Del. 600, 128 A. 565 (Del. Term 1925), and have been followed ever since. "In order to warrant the granting of a new trial..., it must appear (1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial and could not have been discovered before the exercise of due diligence; (3) that it is not merely cumulative or impeaching" State v. Hamilton, 406 A.2d (1974), citing Delaware v. Lynch.

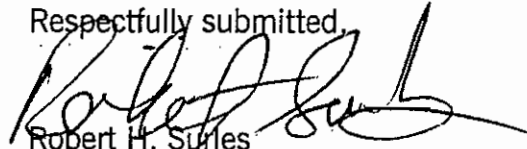
Clearly, the new evidence is cumulative to the evidence presented at trial. At trial, witnesses testified that there were two masked shooters whose face they never saw. Now, we have affidavits from witnesses who again state that the shooter's face was never seen. One affidavit comes from Amanda Chambers, who was arrested for Trafficking in Cocaine and pled guilty to Maintaining a Vehicle on June 29, 1998. Her affidavit repeats the shooters kept their faces covered. The second affidavit from Regina Green, states there is only one shooter and that he kept his face covered. While this information is inconsistent with other defense witnesses as to the number of shooters, it is cumulative as to the face never having been seen.

The fact that the mask was found at the scene clearly corroborates that it came off of the defendant's face at some point. The fact that the State's witnesses indicate that they saw his face when he bent down further down the block during the chase can easily

account for the defense witnesses not seeing the shooters face.

At trial, this same defense evidence was presented and the jury found the defendant guilty. This new evidence is not such that it will probably change the result if a new trial is granted. Therefore, the State prays that you deny the defendant's motion for a new trial.

Respectfully submitted,



Robert H. Surles  
Deputy Attorney General

RHS/agl

xc: Carolyn Ayres, Esquire ✓

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE, )  
 )  
 v. ) ID#: 9608015635  
 )  
 NIKERRAY K. MIDDLEBROOK. )

Submitted: October 9, 1998

Decided: November 17, 1998

## ORDER

Defendant's Renewed Motion For A New Trial--*DENIED*

After a jury trial, on July 18, 1997 Defendant was convicted of Attempted Murder First Degree and related offenses. The central issue at trial was: Who shot Jerome Perkins and Jerry Williams on August 23, 1996? The jury found Defendant guilty and now he asks for a new trial based on newly discovered evidence.

I.

For clarity, brief reference to the case's procedural history is appropriate. Defendant was arrested shortly after the shooting. He was indicted on

Ex. A-23



September 30, 1996. Defendant's trial began July 15, 1997 and, as mentioned, it ended on July 18, 1997. For reasons that have no bearing on the pending motion, Defendant's sentencing was delayed until June 12, 1998.

On June 23, 1998, shortly after sentencing and almost two years after the shootings and Defendant's arrest, Defendant, through counsel, came forward with newly discovered evidence. Specifically, in a motion Defendant presented Amanda Chambers' affidavit. The affidavit claims that "the shooters had on masks and gloves therefore their color let alone faces could not be seen at all."

On June 26, 1998, three days after the motion was filed, the Court issued a preliminary order denying Defendant's motion because it was "insufficient on its face to justify further proceedings." The Court left open the possibility that Defendant would file an amended or supplemental pleading supplying details concerning Chambers' affidavit, including but not limited to why she did not come forward sooner.

On August 21, 1998 Defendant renewed his motion supplying specifics concerning Chambers and her affidavit. On September 4, 1998 the Court solicited the State's response. While the Court waited for the State to respond to Defendant's renewed motion, on September 16, 1998 Defendant filed Regina Green's affidavit

claiming that "the shooter was over 6 feet tall and slender. . . ." Further, Green claims: "At no time did the shooter remove his ski mask . . . nor was his face revealed." The State filed a letter memorandum in response to both affidavits on October 9, 1998.

## II.

A Motion for a new trial based on newly discovered evidence is governed by Super. Ct. Crim. R. 33 and is addressed to the Court's discretion.<sup>1</sup> The standard for granting a new trial based upon newly discovered evidence is settled firmly. The defendant must establish that (1) the evidence could not have been discovered before trial by the exercise of due diligence; (2) the evidence is not merely cumulative or impeaching;<sup>2</sup> (3) the evidence would probably change the outcome of a new trial. When analyzing the new evidence, the Court must determine whether the jury's verdict would be changed by the evidence.<sup>3</sup> The new

---

<sup>1</sup> *Johnson v. State*, Del. Supr., No. 363, Holland, J. (June 22, 1993)(Order).

<sup>2</sup> *Truitt v. State*, Del. Supr., 687 A.2d 197 (1996).

<sup>3</sup> *State v. Hamilton*, Del. Super., 406 A.2d 879, 881 (1974).

Defendant's motion for a new trial is denied because the newly discovered witness' testimony would not have changed the jury's verdict. *Hamilton*, 406 A.2d at 881. *Hamilton* reasons that although the witness was present during a shooting, his testimony would add little and would not likely change the weight the jury gave to the three

evidence must meet all three criteria in order to precipitate a new trial.<sup>4</sup>

### III.

For present purposes, the Court will assume without deciding that the newly discovered evidence could not have been discovered before trial by the exercise of due diligence. Considering Defendant's pleadings, that is a questionable assumption. For example, Chambers' explanation for not coming forward sooner rests in part on her being in prison. Green offers little explanation why for years she kept to herself the fact that she had witnessed an attempted assassination by a masked gunman. Neither Chambers nor Green explains why, despite the obvious seriousness of the crimes they supposedly witnessed and the ensuing police investigation, they did not offer themselves immediately as witnesses. Nevertheless, because the Court will not conduct a hearing, as discussed below, the Court assumes for present purposes that Chambers' and Green's failure to come forward with eyewitness testimony for approximately one and one half years and two years, respectively, was justified.

---

eyewitnesses' testimony. *Id.* at 881.

<sup>4</sup> *Lloyd v. State*, Del. Supr., 534 A.2d 1262, 1267 (1987).

## IV.

Defendant's motion fails because the newly discovered evidence was merely cumulative and impeaching and it probably would not change the outcome of a new trial. Again, for present purposes the Court will view Defendant's newly discovered evidence as entirely proven. Like the Court's previous assumptions about why the evidence could not have been discovered with due diligence before trial, the assumption that Defendant's affidavits are true also is tenuous. As the State observes, Chambers' and Green's affidavits are not consistent even with each other. For example, while Chambers and Green both describe themselves as eyewitnesses, Chambers saw masked "shooters" and Green saw "the shooter." Nevertheless, because there will not be a hearing, the Court accepts the affidavits at face value. The Court assumes that if Chambers and Green testified, the jury would be convinced that the gunman or gunmen were masked and unidentifiable.

Ordinarily, conclusive evidence that an assailant was unidentifiable would be impressive. In this case, however, the newly discovered evidence adds little to the trial record. Everyone always has agreed that the person who shot Jerome Perkins and Jerry Williams was masked. Williams, however, testified that from his unique vantage point he was able to observe Defendant well enough to

make out that the person who shot him was Defendant. Further, Perkins testified that after Williams was shot, Defendant chased Perkins from the original scene. In a different location, not readily observable by witnesses to the original shooting, Perkins saw Defendant pull up Defendant's mask, which made it possible for Perkins to identify him. The victims' testimony was buttressed by other direct and circumstantial evidence. Meisha Perkins testified that as the shooter chased Perkins after shooting Williams, she followed them and she also saw Defendant expose his face. The victims and Meisha Perkins all knew Defendant from before the shootings. The police found gloves and a mask near the scene and the State's witnesses provided a motive for the shootings. Defendant presented witnesses who testified similar to Chambers and Green that the person who shot Williams and chased Perkins could not be recognized. Moreover, Defendant called witnesses to establish an alibi.

In short, at trial both sides focused intensely on the gunman's initial unidentifiability. The State did not seriously contest it. Instead, the State presented evidence from which the jury concluded unanimously and beyond a reasonable doubt that, despite the gunman's wearing a mask, Defendant was the assailant.

It is apparent that the jury rejected Defendant's alibi and reconciled the



eyewitness testimony. While the bystanders to Williams' being shot were unable to identify the shooter, Williams might have been able to recognize Defendant. More importantly, the jury surely scrutinized the eyewitness testimony and its proponents. The jury was able to conclude that Jerome and Meisha Perkins actually had an opportunity to identify Defendant as the one who shot Perkins. The only reasonable conclusion from the evidence is that whoever shot Perkins also shot Williams.

The only evidence that Chambers and Green provide that arguably is new is Green's claim that the shooter "was over 6 feet tall and slender." Without the benefit of a transcript, the Court cannot precisely recall the physical descriptions offered by each eyewitness. Even so, Green's description does not come in a vacuum. To the extent that it is consistent with other witness' testimony, by definition, it is cumulative. To the extent that it is inconsistent it merely is impeaching and not probably persuasive.

For the most part, Defendant's new evidence purportedly undermines the prosecution's case at best. It does little, however, to establish Defendant's innocence. In essence, Defendant's new evidence simply brings into relief Defendant's original argument that the State's case does not support a conviction. Defendant's jury had to have scrutinized the victims' and the other witnesses'

testimony, taking into account the gunman's dress and the witnesses' biases and motives. The jury was able to agree unanimously and without reasonable doubt that Defendant was guilty.

On balance, this was a neighborhood incident that happened instantly on a city street. A masked gunman appeared suddenly, fired shots and fled. Casual bystanders coming forward, sooner and much later, with earnest yet differing accounts are *scenes a faire*.<sup>5</sup> As mentioned above, at first glance Defendant's new evidence seemingly is persuasive potentially. On closer inspection, in context, Chambers' and Green's affidavits are more of the same. They do not form a basis from which the Court can conclude that their testimony probably would cause Defendant's acquittal.

---

<sup>5</sup> See e.g., *Hamilton*, 406 A.2d at 880.

Nikerray Middlebrook  
M.P.C. J.F.  
1301 East 12<sup>th</sup> Street  
Wilmington, DE 19809

Office of The Public Defender  
Cruvel State Building  
820 North French Street  
Wilmington, DE 19801

May 12, 1997

DEAR Mr. JAMES A. RAYARD JR.,

I AM EXPEDITING A TRANSMITTED COPY OF THIS LETTER REQUESTING THAT YOU INTERVIEW THE ENCLOSED "MOTION TO DISMISS." I'M SURE YOU ARE WELL AWARE THAT THE STATE DOES NOT HAVE ANY EVIDENCE IN RETROSPECT TO THE PREVIOUS CHARGE THAT HAPPEND IN SEPTEMBER I HAVE had trial set three times, JANUARY 27, 1997, MARCH 24, 1997 AND MAY 5, 1997. THEREFORE A MOTION TO DISMISS WOULD BE APPROPRIATE. I WOULD ALSO LIKE FOR YOU, IF FEASIBLE, TO SEND ME THE FOLLOWING MATERIAL:

- 1) MY RULE 16 MOTION THAT YOU FILED
- 2) POLICE REPORT
- 3) COPIES OF MY SCIENTIFIC TEST ON MASK, ETC.
- 4) FINGER PRINTS, OBTAINED FROM YOURS
- 5) ALL STATEMENTS MADE BY WITNESSES OR MYSELF AND ANY AND ALL EVIDENCE IN YOUR POSSESSION THE STATE INTENDS TO USE AT TRIAL

Very Truly Yours,

Nikerray K. Middlebrook  
Nikerray K. Middlebrook

January 14, 2000

Ex. B 2

Dear Mr. Bayard,

This letter is a follow-up to the meeting we had on January 14, 2000 at Gander Hill. First, I would like to address the issue of us being straight forward with each other. When we met over three years ago, I was 22 years old, a baby to this system. All I ask from this point on is that you are <sup>very honest</sup> frank in what you say.

Mr. Bayard as to our conversation about you discussing everything with me before filing anything to the courts. I am still holding a firm position on this matter. I want to have sufficient information so I can take an intelligent part in the decisions concerning the goal of my representation and the method of accomplishing what I want, my freedom. I want you to review all legal documents with me before filing to the court. I want you to explain the general strategy and your outlook of success in this case. I believe you have a duty to act in my best interest.

Secondly, I would like to address the fact that last time you were appointed to represent me, I filed a motion to dismiss court appointed counsel. I was willing to proceed pro se at sentencing for the simple reason you failed to represent me effectively. Mr. Bayard we can not make any progress in this legal matter unless we settle some matters you neglected at trial:

(i) You failed to move for funds to hire expert to have scientific analysis done <sup>on</sup> the ski mask found at scene of crime or failed to move to suppress the ski mask.

as being entered into evidence as being worn by me. I suffered unfair prejudice because of you not conducting scientific analysis on the ski mask to in fact prove it was worn by me.

(2) You failed to object to the gun found at scene being entered into evidence or challenge the chain of custody on the gun. When a gun is fired, not only is the bullet marked as it goes through the barrel, but the casing also carries a unique marks from being hit by the firing pin, and any mechanical ejection system. Like the expended bullet, these marks are unique to each gun, and even if the police are able to obtain the casing as evidence they can correctly match gun.

(3) I checked my files and recall requesting you to file a motion to suppress - Identification T.R. Perkins was only shown one photograph of myself. I believe this would make the identification suggestive.

(4) You never at trial pointed out the document that brings doubt in the confidence of Jerry Williams testimony.

Mr. Bayard for good cause you could decline the appointment to represent me. If you cannot handle my case competently because taking my case at this point would result in conflict of interest. I believe that if we cannot come to an agreement in these matters the attorney-client relationship will be damaged. I cannot trust your actions until we meet face to face to discuss everything.

Very truly,

*Nick Middlebrook*

Nickerray Middlebrook



TO: Mr. Bayard

FROM: N. Herray Middlebrook

RE: Rule 61 motion

Date: 5/24/00

Dear Mr. Bayard :

I am deeply troubled by the fact no Rule 61 motion has been filed, you were reappointed by Honorable Fred S. Silverman on January 11, 2000 to handle the situation. Also I expressed to you at our meeting on January 14, 2000 I went us to review all documents before being filed to the court. I desire for a filing deadline in the matter [Filing of Rule 61 motion].

I would like to share some information I have come across lately, I read an article in the News Journal, [Senate Approves DNA evidence bill S.S. 1 for S.B. 329 (Winslow)]. The article caught my attention on the fact convicted criminals who believe DNA Evidence could exonerate them would have 3 years from time the final judgement is entered to ask Court to order DNA Test. I feel we need to discuss this matter between ourselves and consider making the request to the Court.

Also I have found cases which involved the matter where counsel failed to docket an appeal, sentence was vacated and the individual was resentenced. [Bobby Price v. State and Browner v. State, Del Supr., No. 350, 1983 Herrmann, C.J. (Oct. 25, 1987) (Order)] I seriously think you should review each case

Exhibit B-4

Page 2

I expect a meeting with you at Gander Hill soon and a filing of the Rule 61 motion concerning the issues. What is the issue concerning the transcript.

Very Truly Yours,  
Nikky Mint

# Office of Disciplinary Counsel

SUPREME COURT OF THE STATE OF DELAWARE

200 West Ninth Street  
Suite 300-A  
Wilmington, Delaware 19801  
(302) 577-7042  
(302) 577-7048 (FAX)

MARY M. JOHNSTON  
Chief Counsel

ANDREA L. ROCANELLI  
MICHAEL S. MCGINNISS  
MARY SUSAN MUCH  
Disciplinary Counsel

August 28, 2000

**CONFIDENTIAL**

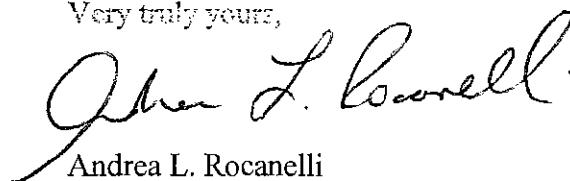
Mr. Nikkeray Middlebrook  
#295569  
Gander Hill Prison  
P.O. Box 9561  
Wilmington, DE 19809

Re: Complaint letter dated August 16, 2000 about James Bayard, Esquire

Dear Mr. Middlebrook:

I have received your letter dated August 16, 2000. In this letter you state a complaint about James Bayard's conduct in connection with his re-appointment to represent you. This Office cannot reconsider or review the Superior Court's decision to re-appoint Mr. Bayard as your defense counsel. However, this Office can make a limited inquiry into your allegations of undue delay. Enclosed is a copy of my letter to Mr. Bayard.

Very truly yours,



Andrea L. Rocanelli

cc: James A. Bayard, Jr., Esquire

EX. B-6

## Office of Disciplinary Counsel

SUPREME COURT OF THE STATE OF DELAWARE

200 West Ninth Street  
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Wilmington, Delaware 19801  
(302) 577-7042  
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MARY M. JOHNSTON  
Chief Counsel

ANDREA L. ROCANELLI  
MICHAEL S. MCGINNISS  
MARY SUSAN MUCH  
Disciplinary Counsel

August 28, 2000

### CONFIDENTIAL

James A. Bayard Jr., Esquire  
Public Defender's Office  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

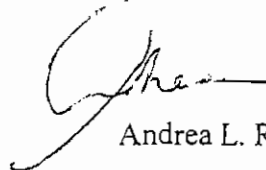
Re: Complaint letter dated August 16, 2000 about James Bayard, Esquire

Dear Mr. Bayard:

This Office has received the enclosed complaint from Mr. Middlebrook. As you know, claims of ineffective assistance of counsel are not addressed by this Office because there are other avenues to address those claims. However, Mr. Middlebrook's complaint seems to raise another issue - specifically, lack of communication and lack of diligence. I am especially sensitive to such claims by Mr. Middlebrook because he seems to have lost his right to a direct appeal, possibly because of another attorney's failure to meet the filing deadline.

Therefore, I ask that you respond to Mr. Middlebrook's complaint, but **only** to his claims that you have been non-responsive and have not filed the necessary post conviction motions on his behalf. Thank you for your attention to this matter.

Sincerely,



Andrea L. Rocanelli

Enclosure

cc: Mr. Nikkeray Middlebrook

## Office of Disciplinary Counsel

SUPREME COURT OF THE STATE OF DELAWARE

200 West Ninth Street  
Suite 300-A  
Wilmington, Delaware 19801  
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MARY M. JOHNSTON  
Chief Counsel

ANDREA L. ROCANELLI  
MICHAEL S. MCGINNISS  
MARY SUSAN MUCH  
Disciplinary Counsel

September 11, 2000

### CONFIDENTIAL

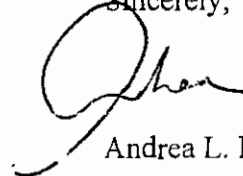
James A. Bayard Jr., Esquire  
Public Defender's Office  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

Re: Complaint letter dated August 16, 2000 about James Bayard, Esquire

Dear Mr. Bayard:

Thank you for your August 30, 2000 letter. As I stated in my August 28, 2000 letter to you, I had already understood that it was another attorney, and not you, who had failed to perfect Mr. Middlebrook's direct appeal rights in the first instance. However, I agree that my letter was otherwise unclear. I would like you to respond to Mr. Middlebrook's contention that, *since your re-appointment by Judge Silverman*, you have not filed the necessary post conviction motions on his behalf. Thank you.

Sincerely,



Andrea L. Rocanelli

Enclosure

cc: Mr. Nikkeray Middlebrook





PUBLIC DEFENDER OF THE STATE OF DELAWARE  
ELBERT N. CARVEL STATE OFFICE BUILDING  
820 NORTH FRENCH STREET, THIRD FLOOR  
P.O. BOX 8911  
WILMINGTON, DELAWARE 19801

LAWRENCE M. SULLIVAN  
PUBLIC DEFENDER

ANGELO FALASCA  
CHIEF DEPUTY

JAMES A. BAYARD, JR.  
ASSISTANT PUBLIC DEFENDER

TELEPHONE  
(302) 577-5121

September 13, 2000

Andrea L. Rocanelli  
Office of the Disciplinary Counsel  
Supreme Court of the State of Delaware  
200 West 9th Street, Suite 300-A  
P.O. Box 472  
Wilmington, DE 19899

RE: Nikerray Middlebrook

Dear Ms. Rocanelli:

I have read your letter of September 11, 2000. I am enclosing a copy of the May 31, 2000 pro se motion for postconviction relief written by Mr. Middlebrook. The first ground does not apply to me. The second ground, you point out in your letter of September 11, 2000 that that issue does not apply to me.

The decision not to have a DNA test run (possible head hairs in a mask) was based on the compelling surrounding evidence of the case.

I will check to see if the mask is still available. The Innocence Project can review the matter to see if in fact there is a DNA sample available for review. Depending on any DNA test results, an appropriate motion would be filed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James A. Bayard, Jr.".

James A. Bayard, Jr.  
Assistant Public Defender

JAB, Jr./ks

cc: Nikerray Middlebrook

## Office of Disciplinary Counsel

SUPREME COURT OF THE STATE OF DELAWARE

200 West Ninth Street  
Suite 300-A  
Wilmington, Delaware 19801  
(302) 577-7042  
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MARY M. JOHNSTON  
Chief Counsel

ANDREA L. ROCANELLI  
MICHAEL S. McGINNISS  
MARY SUSAN MUCH  
Disciplinary Counsel

October 5, 2000

### CONFIDENTIAL

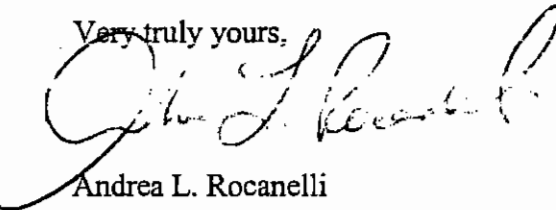
Mr. Nikerray Middlebrook  
SBI 295569  
M.P.C.J.F.  
P. O. Box 9561  
Wilmington, DE 19809

Re: ODC File No. C 00-8-9  
(James A. Bavard, Jr., Esquire)

Dear Mr. Middlebrook:

Thank you for your October 2 letter. I agree that Mr. Bayard has been unresponsive to my specific inquiries. I have now contacted his supervisor and hope to receive some answers.

Very truly yours,



Andrea L. Rocanelli

ALR/mrw



PUBLIC DEFENDER OF THE STATE OF DELAWARE  
ELBERT N. CARVEL STATE OFFICE BUILDING  
820 NORTH FRENCH STREET, THIRD FLOOR  
P.O. BOX 8911  
WILMINGTON, DELAWARE 19801

LAWRENCE M. SULLIVAN  
PUBLIC DEFENDER

ANGELO FALASCA  
CHIEF DEPUTY

JAMES A. BAYARD, JR.  
ASSISTANT PUBLIC DEFENDER

TELEPHONE  
(302) 577-5121

November 9, 2000

Mr. Nikerray Middlebrook  
c/o Delaware Correctional Center  
Smyrna Landing Road  
Smyrna, DE 19977

Dear Mr. Middlebrook:

957  
copy  
+ I have obtained a copy of the list of evidence presented at your trial in 1997. This information will be shared with the Innocence Project. They will then know what evidence to look for that may have potential DNA value.

I will advise you when the Innocence Project has reviewed the evidence from your trial.

Have you sent your application to the Innocence Project?

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Bayard, Jr.".

James A. Bayard, Jr.  
Assistant Public Defender

JAB, Jr./ks

EX-11

## Office of Disciplinary Counsel

SUPREME COURT OF THE STATE OF DELAWARE

200 West Ninth Street  
Suite 300-A  
Wilmington, Delaware 19801  
(302) 577-7042  
(302) 577-7048 (FAX)

MARY M. JOHNSTON  
Chief Counsel

ANDREA L. ROCANELLI  
MICHAEL S. MCGINNISS  
MARY SUSAN MUCH  
Disciplinary Counsel

November 29, 2000

### CONFIDENTIAL

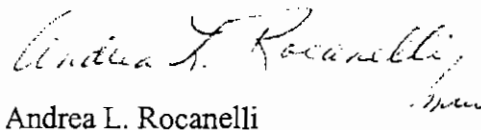
Mr. Nikerray Middlebrook  
SBI 295569  
Delaware Correctional Center  
Smyrna, DE 19977

Re: ODC File No. C00-8-9  
(James A. Bayard, Jr., Esquire)

Dear Mr. Middlebrook:

Thank you for your recent letters. I have an appointment with Mr. Bayard and his supervisor to discuss Mr. Bayard's handling of your criminal matter. Please remember that this Office cannot intervene in your pending criminal matter and will not take any steps to ask that a different Public Defender be assigned to your case. Rather, I hope to improve the communication between you and Mr. Bayard and also to establish appropriate expectations for how the case will be handled.

Very truly yours,

  
Andrea L. Rocanelli

ALR/mrw

Ex-12



**PUBLIC DEFENDER OF THE STATE OF DELAWARE**  
**ELBERT N. CARVEL STATE OFFICE BUILDING**  
**820 NORTH FRENCH STREET, THIRD FLOOR**  
**P.O. BOX 8911**  
**WILMINGTON, DELAWARE 19801**

LAWRENCE M. SULLIVAN  
PUBLIC DEFENDER

ANGELO FALASCA  
CHIEF DEPUTY

LISA M. SCHWIND  
ASSISTANT PUBLIC DEFENDER

TELEPHONE  
(302) 577-5125

September 17, 2001

Jerome M. Capone, Esquire  
4 East 8<sup>th</sup> Street, #200  
Wilmington, DE 19801

Re: State v. Nikerray Middlebrook  
ID#9608015635

Dear Jerry:

The above referenced defendant has applied to the Innocence Project for assistance with post-conviction DNA testing pursuant to 11 Del. Code, Section 4504. He had written to me for assistance. Previously he had been listed as pro se.

Unaware that you were representing him as appointed counsel in his appeal, I spoke to him via video phone on September 12, 2001. I immediately learned that you were representing him on his appeal. I informed him that I would be closing his file at this time.

If it is likely that his appeal may not be complete before that date I am notifying you so that his right for testing may be preserved. 11 Del. Code Section 4504 requires that motions for post-conviction DNA testing for cases with convictions occurring on or before September 1, 2001 must be filed prior to September 1, 2002.

As I have not discussed his case with him, nor reviewed any of the materials connected with his case, I am unaware whether DNA testing would even be applicable.

EX. B-13

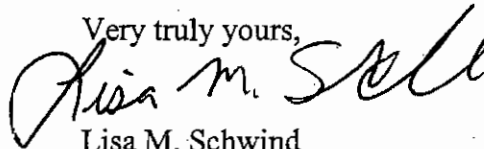


September 17, 2001  
Page two

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My file also reflects a notation that he may have also filed for assistance with the Georgetown Law Center Innocence Project. I did not follow up with him about this issue. Apparently, I received a call from them.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lisa M. Schwind".

Lisa M. Schwind  
Director, Innocence Project

LMS:tez

cc: Nikerray Middlebrook

Ex. B-14



JUDGE SILVERMAN'S CHAMBERS

AUG 20 2004

RECEIVED

M. JANE BRADY  
ATTORNEY GENERAL

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

NEW CASTLE COUNTY  
Carvel State Building  
820 N. French Street  
Wilmington, DE 19801  
Criminal Division (302) 577-8500  
Fax: (302) 577-2496  
Civil Division (302) 577-8400  
Fax: (302) 577-6630  
TTY: (302) 577-5783

KENT COUNTY  
102 West Water Street  
Dover, DE 19904  
Criminal Division (302) 739-4211  
Fax: (302) 739-6727  
Civil Division (302) 739-7641  
Fax: (302) 739-7652  
TTY: (302) 739-1545  
August 20, 2004

SUSSEX COUNTY  
114 E. Market Street  
Georgetown, DE 19947  
(302) 856-5352  
Fax: (302) 856-5369  
TTY: (302) 856-2500

PLEASE REPLY TO : New Castle County

The Honorable Fred Silverman  
Superior Court Judges Chambers  
New Castle County Courthouse  
500 N. King Street  
Wilmington, Delaware 19801

In Re: State v. Nikerray Middlebrook  
I.D. No. 9608015635

Your Honor,

I am the deputy assigned to the above case in which Your Honor requested the taped statements of the defendant. I have been unable to locate any such tapes in the possession of the State. I have been advised by the evidence custodian at Wilmington Police Department that all evidence in this case was destroyed in February 2002. There are no evidence receipts documenting exactly what was destroyed. Additionally, the Chief Investigating Officer in this case does not possess any taped statements of the defendant. I have asked the Superior Court Prothonotary if they possessed such tapes, and I was advised that none were entered into evidence during trial. I am still searching for the prosecution file, and respectfully request an additional two weeks in order to conduct a complete investigation. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

John Barber  
Deputy Attorney General

SO ORDERED.

*J. S. Silverman, Judge August 20*

Copy to : Crim Prothonotary

Mr. Nikerray Middlebrook -

Exhibit B-15

for information only. No response or other filing is called for. We will see what the State files in 2 weeks.

who were acquainted with him. Finally, the record reveals that all the evidence in this case was destroyed in February 2002. See *State v. Middlebrook*, ID No. 9608015635, Letter from John Barber, DAG to Superior Court and Order (Del. Super. Ct. Aug. 20, 2004) (D.I. 137) (Ex. F). Consequently, at the time of Middlebrook's request, there was no evidence to test.\*

\*In sum, the evidence Middlebrook asked the Superior Court to have tested for DNA evidence has been destroyed. As a result, the court could not grant Middlebrook's request. In light of the situation, the Superior Court's decision to deny Middlebrook's postconviction motion was not an abuse of discretion.\*

There's a credibility problem here.